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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION *IN LIMINE* TO PRECLUDE
THE TESTIMONY AND REPORT OF
RICHARD ECHOLS AND ALL
TESTIMONY RELEVANT TO F(12)
AGGRAVATOR

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion *in Limine* to Preclude the Testimony and Report of Richard Echols and all Testimony Relevant to F(12) Aggravator and requests that Defendant's Motion be denied. The State's Response is supported by the following Memorandum of Points and Authorities.

MEMORNDUM OF POINTS AND AUTHORITIES

I. Mr. Echols is expressly qualified to give testimony regarding Defendant's and Carol Kennedy's financial condition prior to and on the date of Carol's murder.

Arizona Rules of Evidence, Rule 702 provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or

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1 education, may testify thereto in the form of an opinion or otherwise.” “The party offering
2 expert testimony must show that the witness is competent to give an expert opinion on the
3 precise issue about which he is asked to testify.” *Gaston v. Hunter*, 121 Ariz. 33, 51, 588 P.2d
4 326, 344 (Ariz. App. 1978).

5 Richard Echols has a Bachelor’s Degree in Accounting, is a Certified Public
6 Accountant, has been certified in Financial Forensics, and is a Certified Fraud Examiner who
7 has over 30 years experience in the fields of accounting, auditing, and fraud examination.
8 Also, Mr. Echols has previously served as an expert witness in Arizona courts in cases
9 involving accounting and criminal fraud. Contrary to Defendant’s assertions, this “knowledge,
10 skill, experience, training, [and] education” leaves Mr. Echols expressly qualified to give
11 expert testimony to assist the trier of fact in determining whether Defendant’s crumbling
12 financial condition was the incentive for Carol’s brutal murder. Mr. Echols’ thorough review
13 of the couple’s joint and individual financial documents led him to conclude that a “perfect
14 storm” had been brewing for Defendant in the months prior to July 2, 2008, and that Defendant
15 did not possess the financial means to satisfy his significant debts. With Carol dead, Defendant
16 was freed from the \$6,000 a month spousal support payments and, had he not been suspected
17 of the murder, would have had access and control over the \$750,000 from Carol’s life
18 insurance policies as well the remainder of Carol’s estate. Furthermore, Defendant and Carol
19 were arguing vigorously over the final disposition of Defendant’s 401K in the approximate
20 amount of \$190, 000 and how any excess monies over the court ordered payment from the
21 401K should be apportioned between the two of them.
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1 **II. The testimony given in support of the (F)(12) aggravator is relevant to Defendant's**
2 **motive.**

3 Defendant requests that the Court preclude any testimony given at the *Chronis* Hearing
4 is support of the (F)(12) aggravator. While the Court struck that particular aggravator, the
5 testimony given regarding the false information Defendant provided to the divorce court and to
6 the Internal Revenue Service is also relevant to Defendant's motive for killing Carol. Although
7 motive is not an element of premeditated murder, *State v. Tuttle*, 58 Ariz. 116, 118 P.2d 88
8 (1941), "it is well settled that in a murder prosecution the presence or absence of motive is
9 relevant." *State v. Hunter*, 136 Ariz. 45, 50, 664 P.2d 195, 200 (1983).

11 [T]he fact that the defendant had some motive, good or bad, for
12 committing the crime is one of the circumstances which,
13 together with other circumstances, may lead the fact-finder to
14 conclude that he did in fact commit the crime; whereas lack of
15 any discernable motive is a circumstance pointing in the
16 direction of his innocence.

17 *Id.* (citation omitted).

18 Here, all of the recently divorced couple's financial records, the bank statements, the
19 credit card statements, the loan and mortgage documents, Defendant's earnings report, the tax
20 returns, the documents related to Defendant's book of business, as well as the documents filed
21 in the divorce proceedings¹, are material to Defendant's motive. As these documents number
22 in the thousands, an expert who can assist the trier of fact sort through the mountain of
23 evidence is essential. Moreover, Echols' opinion testimony regarding the conclusions he
24 derived from his review of the documents is necessary to provide the trier of fact with a
25 complete picture of Defendant's financial condition.

26 ¹ This list is only a sample of the relevant documents and is not inclusive of all documents
the State may seek to introduce at either the guilt or penalty phase of the trial.

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1 **CONCLUSION:**

2 Whereas Mr. Echols' report and testimony regarding Defendant's complete financial
3 circumstances will assist the trier of fact to understand the evidence and to determine the facts
4 in issue, the testimony should not be limited to preclude information regarding tax returns and
5 documents provided to the divorce court. Defendant's Motion should be denied.

6 RESPECTFULLY SUBMITTED this 4th day of
7 January, 2010.

8
9 Sheila Sullivan Polk
10 YAVAPAI COUNTY ATTORNEY

11 By: Dennis M. M. Zare
12 for Joseph C. Butner
13 Deputy County Attorney

14 COPIES of the foregoing delivered this
15 4th day of January, 2010 to:

16 Honorable Thomas J. Lindberg
17 Division 6
18 Yavapai County Superior Court
19 (via email)

20 John Sears
21 107 North Cortez Street, Suite 104
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